

*The Case of Thomas Eyre of Haslop in the County of Derby, Esq; William Inge Esq; and divers other Free-holders and Inhabitants of the Towns of Hope, Bradwall, and Wormhill, in the County of Derby, Appellants from a Decree lately made against them in the Court of the Duchy of Lancaster, at the suit of Thomas Eyre of Gray's Inn, Esq; and other Relators.*



HAT his late Majesty King Charles the First, &c. in Right of his Duchy of Lancaster, was seized of the Mannor and Forest of High-Peak in the said County of Derby, and several Wast-grounds, parcel thereof wherein are the Towns of Bowden, Middlecale-Chappel in Le Frith, and divers others; besides the Towns of Hope, Bradwall, & Wormhill, first mention'd: In which three last Towns the Free-holders and Tenants have Time out of mind, had Common of Pasture, Turbary, and other Profits upon the Wast thereof, and ought still to have.

That the Relator Mr. Eyre, upon a pretended Discovery, That a Moyety of the Wafts within the said Forest, did belong to the Crown, did obtain some Grant or Lease thereof, at Fifty Pounds Yearly, during the Queen Dowagers Term and Interest therein, and One Hundred Pounds Yearly for the Reversion. And thereon exhibited Two Informations against the Tenants of Bowden, Middlecale, and Chappel in Le Frith, and other Hamlets, on which he obtained some Decrees for several Thousands of Acres of Land, to be Allotted and set out for him; pretending there would be Sufficient left for the Free-holders and Tenants, for their Right of Common and Estovers.

But not Content therewith, Exhibited a distinct Information against the Appellants, who with some Hundred more are Free-holders and Tenants of several Messuages and Lands in the said Three Towns of Hope, Bradwall, and Wormhill.

*Thereby Suggesting*

That in 1639. or 1640. the Tenants and Free holders thereof (and of the said other Towns) did Petition his said Late Majesty to De-afforest the said Forest of the High-Peak, for which (as he pretends) his Majesty was to have a Moiety of the Wafts in the said Towns, which he pretends was set out for his Majesty, & the Free-holders and Tenants the other Moiety, in lieu of their Right of Common. And that some Forty or Fifty Years ago, there had been some Agreements made to that purpose: And that some Commission had issued out of the Court of Duchy, to distinguish and set out their respective Moieties accordingly. And therefore Prayed to have a Moiety of the Wast of these three Towns, containing above Three Thousand Statute Acres to be set out for him, and to have an Execution of the said pretended Agreement, by Decree of the said Court of Duchy.

That so great Improvements had formerly been made for the Crown, out of the Wafts of the said three Towns; That there was no Surplusage of Common, and that the Inhabitants Purchased back part of those Improvements, from the Crown, and did let the same lye open and used as Common, in regard of the straitness of the Commons, nor had they been troubled with Deer, or Forest-Laws, or ever Petition'd for any De-afforesting; But were more Losers than Gainers by the De-afforestation. And positively insisted that there never was any Agreement made by any of the Free-holders, or Tenants of any of the said Towns of Hope, Bradwall, or Wormhill, or any on their behalf, That any Part thereof should be Inclosed, or any Colour or Reason for any such Pretence or Agreement: there not being in truth, Common sufficient for the Free-holders, and Tenants thereof.

That the said Cause being thereupon at Issue, and the Appellants having fully prov'd their Case, and by Ancient Records and Examinations, having manifestly differenced those three Towns from the other Towns within the said Forests, there being no Return of any Commission for a Moiety of the Wafts or Commons of these three Towns of Hope, Bradwall, and Wormhill, as there was for several other of the Towns. But on the Contrary, full and positive proof, That there had formerly (many Generations before) been found Improvements out of the Wafts belonging to these three Towns, Besides which there was not Common sufficient left in the Wafts belonging to those three Towns, for the Free-holders and Tenants. And that thereupon the Jury's impanell'd by the Sheriff, Pursuant to the said Commissions, which issued out of the Duchy above forty years ago, tho' they spent ten days in the Execution of the said Commission and Inquisition thereupon, were so far from Consenting to have a Moiety set out for the King, That they absolutely refused so to do.

The said Cause came to be heard before the Chancellor of the Duchy, assisted by the Lord Chief Justice Jones, and three Barons of the Exchequer; and after two days spent in hearing thereof, the main Question being, Whether the Free-holders of the said three Towns of Hope, Bradwall, and Wormhill, had made such Agreement as was by the said Mr. Eyre the Relator pretended, for the setting out and improving of a Moiety of the Wafts belonging to the said three Towns or not? And if an Agreement, how far the same was proper to be decreed in Equity? The said Chief Justice and three Barons then declared, That the said Relator had no sufficient Evidence of any such Agreement as was by him pretended, whereon for the Court to ground a Decree. And therefore Advise'd, That before any further Proceedings should be had in the said Cause, That there should be a Tryal at the Exchequer-Bar the then next Easter Term, by a Middlesex Jury, on this Issue:— Whether the said Free-holders and Tenants of the said three Towns of Hope, Bradwall, and Wormhill, had made any such Agreement as was Suggested, or not? And if an Agreement should be proved and found, Then the Court would Consider how far the same was fit to be Decreed?

That the Relator declining a Tryal (as having too much cause to fear, no such Agreement can ever be proved) moved the Chancellor for a Re-hearing. And in April and May following, the Cause was Re heard, the Chancellor being assisted with three Barons only, the Lord Chief Justice Jones his Assistance being not desired.

That on the Re-hearing, the Relator had no way bettered or altered his Case from what it was at the first hearing: And altho' the Lord Chief Justice Jones had as aforesaid, and the said Baron Atkins after both Hearings, declared their Opinions and Advised the Chancellor that no Decree ought to be made upon the said pretended Agreements, or any further Proceedings to be grounded thereon, without a Tryal at Law first had, whereon to Establish a Decree.

Yet the Chancellor on the Third day of June last, without any further Hearing or Assistance, or Tryal had, Pronounced a Decree for the said Mr. Eyre the Relator, to have a Moiety of the said Commons, on a Survey which he (upon a Commission *ex parte*) had before that time caused to be taken, whereby he allotted in some of the said Towns four parts in five, for a pretended Moyety, And that the Appellants should fence against his part, and pay full Costs, tho' the Appellants had clear Evidence by Records and Credible Witnesses against any Agreement or Presumption thereof.

That the said Decree (as is humbly Conceived) is contrary to the Rules of Equity and Justice, It being not only to Establish an Agreement without, but against Evidence, and to Decree the Execution of a pretended Agreement supposed to be made near fifty years ago, according to which in all this time there hath never been any Enjoyment, Execution, or Performance, and against which there is full and plain Evidence: And yet by this Decree, the Appellants are to have their Inheritances bound, And are to be for ever barred from Tryal of their Right (tho' never so Apparent) And must lose their Common in above Three Thousand Statute Acres, must fence from the Relator (which would Cost them above half the value of their Tenements) and must yield four fifth parts for a Moiety, and pay him full Costs for defending their own Right, or otherwise lye all their Lives in the Goale for disobedience to the said pretended Decree, to the utter Ruine of many of them and their Families, tho' near Five Hundred in number, and of all their Estates in the said Towns.

That the said Proceedings in the said Cause (in the manner of them) are, as is humbly conceived, Unprecedented, and the said Decree manifestly Erroneous and Unjust. And therefore they have humbly Appealed from the same, to the Right Honourable the Lords in Parliament. And do most humbly Pray their Lordships Consideration thereupon, and that Right may be done.

The Relator (and now Respondent) Mr. Eyre, doubting (as it seems) the Justice of his Cause, and whether he can maintain the said Decree upon the Merits, By his Answer to the said Petition of Appeal, doth insist, That the King's Attorney, and the Queen Dowager's Attorney and Trustees, being Parties with him, in the Information of the Duchy, ought also to have been made Defendants to the Appellants Petition of Appeal.

In the Original of the Cause in the Duchy, it might be reasonable to Insist they should be made Parties, That at the Hearing of the Cause it might appear how far the King, or Queen, or her Trustees were concerned, least any thing might be done in the said Cause, to the Prejudice of their Right or Interest, without their being heard.

But when the said Cause came to Hearing, it did fully Appear by the Relator Eyre's own Grants and Evidence: That the Crown, or the Queen Dowager, or her Trustees, were in no sort whatsoever, concerned in any wise: The Lands and Right of the Crown, as also of the Queen and her Trustees, being absolutely Granted away to the Relator and his Heirs in Fee-Simple. And thereupon the very Decree made in the Duchy, is only for the Benefit of Mr. Eyre the Relator, and nothing at all Ordered (*Pro or Con*) in reference to the Crown, or her said Majesty and her Trustees.

The Appellants Petition is only against the Decree made for Mr. Eyre the Relator, And they are yet to learn why they should make those Persons Parties, for or against whom there is no Order or Decree, and who are no ways concerned in the Decree that is Appealed against, whether it stand Confirmed or be Reverfed. It being Agreed on all sides, That the Lands Mr. Eyre hath already obtained (and which are not in question in this Cause) are Abundantly more than Sufficient to Answer the Fee-farm Rent Reserved to the Crown in all Events.